IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.C. No. 158 of 2002 (O&M)

DATE OF DECISION: 3.12.2007

Commissioner, Central Excise Commissionerate, Chandigarh-I

…Petitioner

Versus

M/s Kandhari Beverages Ltd. and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Gurpreet Singh, Advocate,
for the petitioner.

M.M. KUMAR, J.

This reference petition under Section 35H(1) of the Central Excise Act, 1944 (for brevity, 'the Act') has been filed by the revenue challenging order dated 6.2.2002, passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Northern Division Bench (now known as 'Customs, Excise and Service Tax Appellate Tribunal') (for brevity, 'the Tribunal'), with a prayer to direct the Tribunal to draw statement of the case and refer the following question of law to this Court for determination:-

> "Whether the Tribunal has erred in law in allowing the Modvat credit by placing reliance upon a non speaking order on issues raised by the department in the grounds of appeal, passed in party's own case?"

During the pendency of the instant petition, the revenue has filed Civil Misc. No. 23006-CII of 2007 seeking permission of this Court for reframing the question of law, which is as under:-

> "Whether the cost of packing material having not been included in the preceding financial year in the assessable value of the final product would the packing material qualify as an input for the purpose of Modvat Credit?

After hearing learned counsel and perusing the record we find that there is no merit in the instant reference petition and the same is liable to be declined. The Tribunal in para 5 of its order has placed reliance on the earlier case between the parties deciding similar issues. It has quoted the following para from the earlier order:-

> "In the instant case we find that the cost of glass bottles and plastic crates is included in the assessable value of the aerated waters and hence in terms of Explanation under Rule 57A, Modvat credit will be admissible."

It has been categorically found that in the instant case also the assessee had submitted a Chartered Accountant's certificate proving clearly that the value of glass bottles and plastic crates was on pro-rata basis included in the assessable value of aerated waters, which satisfy the requirement of Rule 57A of the Central Excise Rules, 1944. Once the aforementioned finding of fact has come then there is no scope left for us to interfere in those findings of fact. This Court cannot in any case re-appreciate evidence to reach a conclusion different than the one reached by the Tribunal merely because another

view is possible. There is, thus, no question of law which would emerge for reference to this Court. Accordingly the prayer of the revenue is declined.

In view of the fact that reference has been declined, we do not feel the necessity of passing any order in Civil Misc. No. 23006-CII of 2007.

(M.M. KUMAR)
JUDGE

(RAJIVE BHALLA)
JUDGE

December 3, 2007
Pkapoor